

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 DAVID RIBOT, PERRY HALL,) Case No. CV 11-02404 DDP (FMOx)
12 JR., DEBORAH MILLS, ANTHONY)
13 BUTLER, JENNIFER BUTLER,)
14 JONATHAN LUNA and LOIS) ORDER CLARIFYING AND MODIFYING
15 BARNES, individually, and on) CLASS DEFINITIONS AND SPECIFYING
behalf of all others) PROCEDURES FOR CLASS NOTICE,
situuated,) CLASS LISTS, AND DISCOVERY
16 v.)
17 FARMERS INSURANCE GROUP,)
18 FARMERS INSURANCE EXCHANGE,)
19 21st CENTURY INSURANCE)
COMPANY and AIG INSURANCE)
SERVICE, INC.,)
20 Defendants.)

)

23 Presently before the court are Plaintiffs' Motion to Modify
24 and Clarify Class Definitions (DKT No. 240) and Motion to Approve
25 and Distribute Class Notice and Production of Class Lists (DKT No.
26 237), as well as Defendants' Oppositions to these motions (DTK Nos.
27 244 and 245). Additionally, the court has before it Plaintiffs'
28 Third Status Report Regarding Meet and Confer Efforts with the

1 Dept. of Labor (DKT No. 234) and Defendants' response (DKT. No 243-
 2 1).

3 The background and procedural history are well known. Having
 4 reviewed the parties' submissions and heard oral argument, the
 5 court rules as follows:

6 **I. Clarifications**

7 **A. Request by Plaintiffs to Clarify Scope of Employees Excluded
 8 Pursuant to Department of Labor (DOL) Settlement**

9 Plaintiffs ask the court to clarify the scope of employees
 10 excluded pursuant to the settlement reached between Farmers and the
 11 DOL. Plaintiffs' position appears to be that only employees at work
 12 sites covered by the DOL settlement who signed a waiver document
 13 have validly waived future FLSA claims and should therefore be
 14 excluded from the FLSA class. (DKT No. 240 at 11; Declaration of
 15 William King in Support of Motion ¶ 6.)

16 The court disagrees. As Defendants point out, courts that
 17 have considered the issue have consistently and persuasively held
 18 that acceptance of settlement funds and receipt of the applicable
 19 notice form (WH-58) is sufficient to constitute waiver of FLSA
 20 claims; signing of the form is not required. See, e.g. Blackwell
v. United Drywall Supply, 362 Fed. Appx. 56, 58 (11th Cir. 2010)
 21 (holding that "receipt of a WH-58 form and cashing of the
 22 employer's check is sufficient to effect a waiver of the right to
 23 sue under the FLSA"); Niland v. Delta Recycling Corp., 377 F.3d
 24 1244, 1248 (11th Cir. 2004) ("A WH-58 is a standard form used by
 25 the DOL to inform an employee that, although he has the right to
 26 file suit under 29 U.S.C. § 216(b), acceptance of the back wages
 27 offered will result in waiver of those rights."); Kaiser v. At The

1 Beach, Inc., 2010 WL 5114729, at *10 (N.D. Okl. Dec. 9, 2010)
2 (holding that any employee who receives but does not sign WH-58
3 form and cashes check has "waived his right to sue for back wages
4 for the period covered by the receipt [WH-58 form]."). Plaintiffs'
5 reliance on Dent v. Cox Comm. Las Vegas, Inc. 502 F.3d 1141 (9th
6 Cir.) is misplaced because Dent held only that a WH-58 form does
7 not constitute waiver of FLSA claims arising from incidents outside
8 of the period covered by the form.

9 Additionally, Plaintiffs appear to suggest that employees at
10 work sites covered by the DOL settlement who did not receive
11 settlement proceeds because they could not be located should be
12 included in the FLSA class. See DKT. No. 240 at 7. The court does
13 not agree. Defendants have asserted, and plaintiffs have presented
14 no evidence to contest, that as part of the DOL settlement, the DOL
15 lawfully accepted payment on behalf of employees who were tendered
16 but did not cash their checks. (DKT. No. 214 at 6, 12). Plaintiffs
17 have presented no evidence of any legal deficiency in the
18 distribution process. As the court made clear in denying
19 Plaintiffs' motion to Equitably Toll Limitations and For Corrective
20 Action, (DKT. No. 223):

21 There are strong public policy reasons for the court to
22 refrain from interfering with the finality of a settlement,
23 especially one negotiated by the DOL. The DOL was given the
24 express authority to supervise the settlement of wage claims.
25 29 U.S.C. 216(c). The court would need to have a serious
26 concern with the validity of the agreement to inject itself in
27 an already disbursed settlement nearly two years after the
28 fact.

1 DTK No. 223 at 7-8. In view of these considerations, the court
2 clarifies that the language in its certification order excluding
3 from the FLSA class "class members whose overtime claims were
4 settled in the March 14, 2011 Farmers-Department of Labor
5 Settlement Agreement" refers to employees employed at the work
6 sites covered by the DOL agreement specified in the order who were
7 tendered settlement checks by Farmers and were given WH-58 forms.
8 See DKT No. 240 at 10-11.

9 **B. Request by Plaintiffs to Clarify Application of Equitable
10 Tolling**

11 The court tolled the statute of limitations to "30 days after
12 the first request for the production of the class list," that is,
13 February 24, 2012. See DKT No. 222 at 35, 27. Plaintiffs ask the
14 court to clarify the application of its equitable tolling order as
15 it relates to the DOL tolling agreement. Id. at 32-36.

16 The court hereby clarifies that the period covered by the
17 court's tolling order and the period covered by the DOL tolling
18 agreement do not "piggy back." Where the statutory period
19 preceding the date of the tolling order and the DOL tolling
20 agreement cover the same calendar day, a class member is entitled
21 to only one day--not two--in calculating her statutory period.

22 The court further clarifies that the statute of limitations is
23 tolled as of February 24, 2012, with the tolling period extending
24 from that date until the date the class member opts-in to the
25 collective action (assuming this occurs prior to the cut-off date
26 for opting-in). See DKT No. 222 at 37:28-38:3.

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1 **III. Modification of Class Definitions**2 **A. Request by Plaintiffs to Add Job Descriptions to FLSA Class**
3 **Definition**

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5 Plaintiffs request that the court modify the first paragraph
6 of the FLSA class definition to include job descriptions now
7 included in the Rule 23 class definition. DKT. No. 23 at 30.
8 Plaintiffs included the term "claimants," a term which is not
9 included in the Rule 23 class definition, in their proposed
10 language for the FLSA class definition. Id. Defendants objected to
11 inclusion of the term "claimants." Dkt. No. 245 at 8. Plaintiffs
12 informed the court at the September 23, 2013 hearing that they
13 agreed to remove the term "claimants" from the proposed text.

14

15 The court will modify the FLSA class definition, excluding the
16 term "claimants." The first paragraph of the FLSA class definition
shall now read (with new language in bold) as follows:

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18 All current and former customer facing call center employees
19 of Defendants, Farmers Services L.L.C., Farmers Insurance
20 Exchange, and 21st Century Insurance Company, that held or
hold the position of "Customer Service Representative,"
21 "Customer Service Associate," "Customer Service Advocate," **or**
22 **a similar customer-facing position with the central duty of**
23 **taking inbound telephone calls from policyholders and agents**
24 between the relevant statutory period, three years preceding
25 February 24, 2012, and the time additional class members opt
26 in to the collective action.

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1 **B. Request by Plaintiffs to Add 21st Century to the Rule 23 Class**
2 **Definition**

3 Plaintiffs ask that the court add 21st Century Insurance
4 Company to the definition for the Rule 23 class. Plaintiffs assert
5 that 21st Century was inadvertently omitted from the Rule 23 class.
6 DKT No. 240 at 7. The court agrees that 21st Century's omission was
7 inadvertent. However, Defendants object to the addition of 21st
8 Century on the ground that they have recently discovered documents
9 signed by the 21st Century named plaintiffs prior to the filing of
10 this lawsuit in which these plaintiffs waived future claims against
11 21st Century and therefore lack standing to bring suit. DTK No. 245
12 at 6. Plaintiffs have not responded substantively to Defendants'
13 objections concerning the alleged waivers but indicated at the
14 September 23 hearing that Plaintiffs' response would be
15 forthcoming.

16 In light of Defendants' objections, the court will take no
17 action relative to Plaintiffs' request to add 21st Century, pending
18 Plaintiffs' response on the waiver issue. The parties are ordered
19 to meet and confer to ensure that Plaintiffs have adequate
20 information on which to base their response. The court agrees with
21 Defendants that class notice procedures cannot be finalized until
22 this issue is resolved.

23 **III. Matters related to Issuance of Class Notice, Production of**
24 **Class Lists, and Discovery**

25 **A. Preparation of Class Lists:** Defendants shall have 90 days
26 from the date of this order to prepare class lists.

27 **B. Opt-in Period:** Class members shall have 90 days to opt-in
28 to the FLSA collective action and/or opt-out of the Rule 23 action.

1 The notice period shall begin running seven days from Plaintiffs'
2 receipt of the final, agreed upon class lists.

3 **C. Email Notice:** The court finds that use of both paper mail
4 and email is the most effective means of providing notice to
5 prospective class members. The parties are ordered to meet and
6 confer with the goal of enabling email notice to current and former
7 employees. Defendants are ordered to make good faith efforts to
8 have the companies' information technology employees work on a
9 reasonable solution to permit this.

10 **D. DOL-related Discovery:** Per the court's August 14, 2013
11 order, DKT No. 230, Plaintiffs are ordered to meet and confer with
12 Defendants regarding the discovery of documents in the possession
13 of the U.S. Department of Labor.

14 **IV. Conclusion**

15 The court understands that the parties have recently reached
16 agreements or made progress relative to other matters raised in the
17 papers before it. The court appreciates the parties' efforts to
18 resolve disputes. The court orders the parties to continue to
19 confer to the greatest extent possible to attempt to resolve any
20 and all disputes.

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22 IT IS SO ORDERED.

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24 Dated: September 24, 2013



25 DEAN D. PREGERSON
26 United States District Judge

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